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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re S.G., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

A.O.,

Defendant and Appellant.

E070997

(Super.Ct.No. RIJ118168)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Judge. Affirmed.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant
and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Julie
Koons Jarvi, Deputy County Counsel, for Plaintiff and Respondent.

A.O. (mother) appeals the order terminating her parental rights and finding her two-year-old son, S., likely to be adopted. She argues there is insufficient evidence S. was adoptable and, had she been given adequate notice the court was considering adoption, she could have attended the permanency planning hearing and argued against it. As we explain *post*, mother received notice on multiple occasions and the record supports the finding S. is adoptable. We will therefore affirm.

I

FACTUAL BACKGROUND

S., born in October 2015, is mother's youngest child. She has two older children who were both subjects of dependencies—the juvenile court terminated her parental rights over one and placed the other in the father's custody. S. came to the attention of the Riverside County Department of Public Social Services (DPSS) in the summer of 2016, when he was nine months old. S.G., Sr., his presumed father, had just been arrested, and mother called the police station attempting to locate her son.¹ She said she had been at a park with the presumed father the day before and he had taken off with S. The social worker interviewed the presumed father in jail and ultimately tracked S. down in the care of the presumed father's girlfriend.

The social worker then interviewed mother, who reported being unemployed and without a stable home. She said she had suffered from substance abuse issues since she

¹ S.'s presumed father and his biological father were both involved in the dependency and the juvenile court ultimately terminated their parental rights, but neither is a party to this appeal. We mention them only where relevant to mother.

was 14 years old. She told the social worker she preferred methamphetamine and had last used two days earlier. She had just been released from jail after serving time for a drug sales conviction.

DPSS placed S. in protective custody and filed a dependency petition alleging mother endangered his safety by abusing drugs and living a transient lifestyle. The petition also alleged she had an extensive criminal history and had tested positive for amphetamine upon giving birth to one of S.'s siblings.

Mother attended the detention hearing in July 2016. The court appointed Anastasia Georggin as her counsel, and an attorney appearing on Georggin's behalf accepted the appointment.

Mother's whereabouts were unknown at the time of the jurisdiction and disposition hearing in August 2016. The court found the petition's allegations true, removed S. from her custody and denied her reunification services for failing to make reasonable efforts to treat the problems that led to removal of S.'s siblings. (Welf. & Inst. Code, § 361.5, subd. (b)(10) & (11); unlabeled statutory citations refer to this code).²

² Section 361.5, subdivision (b)(10) allows a court to bypass reunification services if it finds by clear and convincing evidence: "That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian." Similarly, 361.5, subdivision (b)(11) allows bypass upon a finding: "That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent

Mother also did not attend the six-month review hearing in March 2017, where the court terminated the presumed father's services.

On May 18, 2017, DPSS sent mother notice that on July 21 the court would hold a section 366.26 permanency planning hearing and consider the social worker's recommendation to terminate her parental rights. Mother then appeared at hearings on May 24 and June 14 to discuss DNA testing to determine S.'s biological father. The test results revealed S.'s biological father was U.M., not the presumed father S.G., Sr. At the June 14 hearing mother's counsel, Georggin, told the court they had reviewed the test results and mother was "confirming the [permanency planning] hearing of July the 21st." The court ordered mother to appear on July 21, 2017, and also mailed notice to both her and her counsel, advising the section 366.26 permanency planning hearing "may result in the termination of your parental rights." The June 14, 2017 hearing was the last time mother appeared in court.

The following month, DPSS filed a section 366.26 report recommending for S. a "Planned Permanent Living Arrangement [(PPLA)] with the goal of adoption."³ DPSS believed "the likelihood of [S.] being adopted [was] high." His foster parent was

described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent."

³ "The Adoption and Safe Families Act of 1997 (Pub.L. No. 105-89 (Nov. 19, 1997) 111 Stat. 2115) coined the term 'planned permanent living arrangement' for any living arrangement other than reunification, adoption, legal guardianship, or placement with a relative. [Citation.] The term was intended to replace the largely overlapping category, 'long-term foster care.' [Citation.]" (*A.M. v. Superior Court* (2015) 237 Cal.App.4th 506, 510, fn. 2.)

interested in adopting him, as was his paternal aunt. The social worker described S. as a “content child.” He was developmentally on track, walking and starting to communicate with sounds and body language.

The foster parent had been caring for S. for about a year, since July 2016. Early on in the placement, S. would cry “like he [was] being abandoned” when left alone in a room, but the foster parent viewed the tantrums as normal for a child his age. By December 2016, S. was no longer throwing abandonment-based tantrums, but he would still get upset “when he thinks that people are gone and have left him.” In early 2017, S. began throwing tantrums when he didn’t get what he wanted. But according to the foster parent, he was responsive to time-outs and the tantrums lessened as a result.

When the social worker visited the foster home in February 2017, S. was happy and healthy. He gave the social worker “a high five hand gesture, [and] was also laughing and smiling.” At the time of the July 2017 report, the foster parent was still working with S. on his tantrums, which were starting to happen inside stores while shopping.

On July 21, 2017, the juvenile court continued the permanency planning hearing to allow DPSS time to complete an adoption assessment. The court found DPSS had exercised due diligence in trying to locate mother and ordered that notice to her counsel would be sufficient going forward.

That same month, the foster parent withdrew his adoption application and told DPSS he felt it would be better for S. to be adopted by a family member. The paternal

aunt was still interested in adopting S. and was in the process of obtaining DPSS's approval.

In the fall of 2017, S. began going to therapy for his tantrums. His therapist recommended he be assessed for autism and speech issues. In a November 2017 report, DPSS said it still viewed S. as adoptable and was "certain [he] will end up with his biological family or a family that would be willing to adopt him." The foster parent was committed to caring for S. until they found him a permanent home.

On November 29, 2017, DPSS provisionally placed S. with the paternal aunt, while its Resource Family Approval unit continued to assess her home. S. adjusted well to his new environment. The aunt's mother—S.'s paternal grandmother—would watch him during the week while the aunt was at work. In addition, therapy was proving beneficial. S.'s tantrums were becoming less frequent and his behavior had improved generally. His therapist continued to believe he might qualify for speech services, however, as he was "having difficulty using words which at his age he should be using."

In April 2018, S. began taking speech therapy classes twice a week through the Inland Regional Center. The aunt continued to meet his needs and wanted to adopt him. She left her job to care for him fulltime, and the paternal grandmother had gone back to work to support the household financially.

The court continued the permanency planning hearing multiple times during this period. Each time, DPSS sent notice to mother and her counsel, advising her of the new hearing date and its recommendation to terminate her parental rights. After nearly a year

of continuances, the court held the permanency and planning hearing on June 27, 2018. By that time, the aunt was making her way through DPSS's adoption approval process. She had finished her psychological examination, but still needed to complete CPR/First Aid training. The Resource Family Approval unit had approved her home, and DPSS was awaiting approval from the Resource Family Department. As soon as the Resource Family Department approved the home, DPSS could assign the aunt an adoption social worker and complete an adoption assessment. DPSS asked for another continuance to complete the assessment, but the court denied the request on the ground it had enough evidence to find S. generally adoptable and select adoption as his permanent plan. "[T]he minor [is] in a very good, loving home with his paternal aunt who is committed to adopting [him]."

Mother was not present at the hearing, but she was represented by an attorney specially appearing for her appointed counsel, Georggin. The attorney told the court Georggin had not been able to locate mother since June 2017 and was seeking to be relieved, but the court did not rule on the request. It found S. was generally adoptable and terminated mother's parental rights.

II

DISCUSSION

Mother argues the juvenile court violated her due process rights by failing to ensure she had been adequately notified of DPSS's recommendation to terminate her parental rights and by holding the permanency planning hearing without her appointed

counsel present. She argues these errors are not harmless because had she been present or adequately represented, “she could have challenged her son’s adoptability.”

According to mother, S.’s behavior was so “challenging” that “no juvenile court can reasonably infer that [he] is generally adoptable.” We find no merit in these arguments.

A. *Due Process*

Mother admits DPSS sent her several notices advising her of its recommendation to terminate her parental rights. The record contains notices sent on August 23, 2017, November 29, 2017, and April 3, 2018, each of which advise her and her counsel of DPSS’s recommendation to terminate parental rights and implement “a plan of adoption.” She argues the April 3 notice was inadequate, however, because a couple months later, on June 20, 2018, DPSS issued notice for a section 366.3 post-permanency review hearing, and that notice said DPSS was recommending “PPLA for the child, [S.] with a specific goal of adoption.” According to mother, because PPLAs do not require a severing of parental rights, the section 366.3 notice constituted a change of recommendation. She argues DPSS was required to send her *another section 366.26* notice if it intended to recommend terminating her parental rights at the permanency planning hearing.

Mother is incorrect. The section 366.3 notice regarding a post-permanency review hearing to take place a month after the termination of parental rights does not override the April 3 notice for the section 366.26 permanency planning hearing. When a court selects adoption as a child’s permanent plan, section 366.3 requires the court to retain jurisdiction over the child and hold review hearings “until the child . . . is adopted.”

(§ 366.3, subd. (a).) The purpose of a section 366.26 hearing is to select the child’s permanent plan, whereas the purpose of section 366.3 review hearings is to “ensure that the adoption . . . is completed as expeditiously as possible.” (*Ibid.*) The June 20 section 366.3 notice in no way indicated DPSS was changing its recommendation to terminate mother’s parental rights at the section 366.26 hearing. It simply notified mother that the court would hold a section 366.3 hearing about a month after the permanency planning hearing to monitor DPSS’s progress in finalizing S.’s adoption. DPSS never wavered in its view that adoption should be S.’s permanent plan (even the June 20 notice says the goal is adoption), and it never recommended anything other than terminating mother’s rights. Also, given that mother didn’t attend the first scheduled section 366.26 hearing in July 2017—after being personally ordered by the court to appear and being advised her parental rights could be terminated—or attend any of the other scheduled 366.26 hearings for which she received notice, it strikes us as disingenuous to now argue the reason for her absence at the continued hearing in June 2018 is the reference to a PPLA in the June 20 notice.

On the issue of representation, it doesn’t matter that special counsel appeared on behalf of mother’s appointed counsel at the section 366.26 hearing. (See *Streit v. Covington & Crowe* (2000) 82 Cal.App.4th 441, 444, fn. 2 [generally, special appearance “denote[s] an appearance at a hearing by one attorney at the request and in the place of the attorney of record”].) Special counsel frequently appeared for Georggin, mother’s appointed counsel, during this dependency, including at the initial detention hearing to

accept the appointment on Georggin’s behalf. Mother does not claim special counsel was unable to act zealously on her behalf or “‘failed to act in a manner . . . of reasonably competent attorneys acting as diligent advocates.’” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1662.) She does not explain what Georggin would have done differently than special counsel to secure a different result at the hearing. As far as we can tell, her sole complaint is that special counsel was not the same person as appointed counsel—that does not rise to an issue of constitutional magnitude.

B. *Adoptability*

Even if mother *could* demonstrate a due process violation, her claim of prejudice is meritless. She argues that had she known the court was considering terminating her parental rights she would have argued against S.’s adoptability. She claims the fact he “suffers from ‘extreme tantrums’” renders him unadoptable. We disagree.

“Adoption is the preferred permanent plan.” (*In re Jasmine T.* (1999) 73 Cal.App.4th 209, 212.) “The issue of adoptability requires the court to focus on the child, and whether the child’s age, physical condition, and emotional state make it difficult to find a person willing to adopt.” (*In re Brian P.* (2002) 99 Cal.App.4th 616, 624.) A child’s young age, good physical health, and “ability to develop interpersonal relationships” are all attributes “indicating adoptability.” (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1562 (*Gregory A.*)). “All that is required is clear and convincing evidence of the likelihood that adoption will be realized *within a reasonable time.*” (*In re Zeth S.* (2003) 31 Cal.4th 396, 406, italics added.)

We review an adoptability finding for substantial evidence, giving the finding “the benefit of every reasonable inference and resolve any evidentiary conflicts in [its] favor.” (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232.) “Although a finding of adoptability must be supported by clear and convincing evidence, it is nevertheless a low threshold: The court must merely determine that it is ‘likely’ that the child will be adopted within a reasonable time.” (*In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

Here, the record contains substantial evidence S. was adoptable. He was very young (only two years old) at the time of the hearing. The social worker described him as a cheerful and content child. He was in good physical health and adapted well to both of his placements—first with the foster parent then with the aunt. The fact he throws tantrums does not make him unadoptable. If that were the case, we’d be hard pressed to find an adoptable two year old. And in any event, his tantrums lessened after he started therapy. Mother makes much of the foster father’s withdrawn application, but his reason for withdrawing was not the tantrums. He felt S. should be raised by a family member, and that decision made room for S.’s aunt to adopt him. The sheer fact that the two people who cared for S. both wanted to adopt him speaks volumes of the child’s adoptability. (*Gregory A.*, *supra*, 126 Cal.App.4th at p. 1562 [one parent’s “““interest in adopting the minor is evidence that the minor’s age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor”””].)

Mother's attempt to compare S. to the minor in *In re Brandon T.* (2008) 164 Cal.App.4th 1400 is unpersuasive. Brandon T. was an Indian child who suffered delays "in all areas of development." (*Id.* at p. 1406, fn. 2.) The court concluded he was not *generally* adoptable because the department had been unable to locate any Indian families who could meet his needs. The court concluded he was *specifically* adoptable, however, because a relative wanted to adopt him and could take care of his needs. (*Id.* at pp. 1406, 1409.) ICWA's placement provisions do not apply to S., and his tantrums and potential speech issues are nothing like the "global delays" Brandon T. suffered.

Contrary to mother's assertion, it was not error for the juvenile court to find S. generally adoptable before DPSS had completed an adoption assessment. A general adoptability finding does not require there be a prospective adoptive parent who has "completed the necessary steps to clear them to adopt." (*Gregory A.*, *supra*, 126 Cal.App.4th at p. 1563 [finding child adoptable where the foster parents had expressed a desire to adopt throughout the dependency and the agency had approved their home for placement].) "It is not necessary that the child already be placed in a preadoptive home, or that a proposed adoptive parent be waiting." (*In re Brian P.*, *supra*, 99 Cal.App.4th at p. 624.)

In short, S. is a young, healthy, and lovable child. His one behavioral issue is improving through therapy and didn't prevent his caretakers from wanting to adopt him. At the time of the finding, the paternal aunt was committed to adopting S. and was well

on her way through DPSS’s approval process. Based on this evidence, we conclude the court properly determined he would be adopted in a reasonable time.⁴

III

DISPOSITION

We affirm the order.

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SLOUGH
J.

We concur:

McKINSTER
Acting P. J.

FIELDS
J.

⁴ DPSS points to its July 2018 status review report and the juvenile court’s order from the section 366.3 review hearing from the same month (both included in the appellate record) as further evidence of S.’s adoptability. The order says the court reviewed DPSS’s status review report—which reflects S. was thriving in speech therapy and the aunt’s care—and found his adoption would likely be finalized by January 2019. Mother argues we cannot consider this postjudgment evidence, citing to *In re Zeth S.* (2003) 31 Cal.4th 396, which held a reviewing court generally may not use “postjudgment evidence of changed circumstances in an appeal of an order terminating parental rights . . . to reverse juvenile court judgments and remand cases for new hearings.” (*Id.* at p. 413) But whether we may consider the postjudgment evidence to *affirm* the juvenile court’s adoptability finding is a different issue, and one we need not resolve, as the record contained sufficient support for the finding when the court made it.